

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE-CHAIR DALE MAHLUM** on February 19, 2001 at 3:00 P.M., in Room 317-B/C Capitol. **CHAIRMAN BILL CRISMORE** arrived shortly thereafter.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 455, 2/15/2001; SB 484,
2/16/2001; SB 449, 2/13/2001
Executive Action: SB 455; SB 484; SB 449; SB 463

HEARING ON SB 455

Sponsor: SEN. STEVEN DOHERTY (D), SD 24, Great Falls

Proponents: None.

Opponents: None.

Opening Statement by Sponsor:

SEN. STEVEN DOHERTY, SD 24, Great Falls, opened by saying that **SB 455** was a bill for an act clarifying that documents may be recorded for the subdivision and transfer of land into areas over which the state does not have jurisdiction. This would amend sections 76-3-201, 76-3-301, and 76-3-302 of the Montana codes and would be effective immediately. This bill arose out of a situation he discovered in his day job where he occasionally was called upon to file deeds when property was transferred. There was a problem on the Blackfeet Reservation because the law did not provide an exemption for recording deeds on property that was transferred from a tribal member to the tribe. The county clerk and recorder reported that it was not available to record that plat because it would need to go through subdivision review. The tribe responded that they were not going through this review because there was no need to go through subdivision review because the county had no jurisdiction over how the tribe disposed of property between its members and itself. The County Attorney in Glacier County, Larry Epstein, suggested they sue the county, the county clerk and recorder, and the county attorney and allege that the county was not doing what they needed to do. He would go into a court and confess judgement and admit that the county was right and then get a court order requiring the county clerk and recorder to file the plat even though there was no exemption because he confessed judgment and then the property could be transferred over without a fight. That case brought this bill forward simply to allow an area, in those instances in which the state did not have jurisdiction, to be an exemption to the Plat and Recording Act under the subdivision law. The reason they did not just include Indian reservations was that Montana had air force bases, forest service land, Bureau of Land Management lands, and all kinds of land.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked what happened with his court case. **SEN. DOHERTY** responded it had not gone to court yet. He had spoken with the county attorney and they were waiting to see what might happen with this bill. They could go to court although it would create an expense for both sides. **SEN. MACK COLE** stated that **SEN. DOHERTY** started out talking about trust lands, as far as Indian lands were concerned, then spoke of all federal land and **SEN. COLE** noted some differences there. **SEN. COLE** wondered if **SEN. DOHERTY** wanted to put all of those lands together with this bill. **SEN. DOHERTY** responded that the proposal would have just affected lands on reservations. He spoke with **Greg Petesch**, legislative staffer, about whether there might be a circumstance when the forest service was going to deed land to a county or to an individual if there was a land squabble. In those instances, there would not be jurisdiction for the forest service land and

rather than having to go through the subdivision review process, the legislation was drafted to include all lands where the state did not have jurisdiction. **SEN. LORENTS GROSFIELD** referred to language in section one of the bill and asked how land could be transferred to another location. **SEN. DOHERTY** stated that he thought that "transferred to a location" would refer to "within the bounds of a reservation", for example. **SEN. GROSFIELD** stated that the tract of land was not being moved and thought the language should read when the "title" to the tract was transferred to a location. **SEN. DOHERTY** agreed and **Mary Vandembosch** would draft that amendment.

Closing by Sponsor:

SEN. DOHERTY closed by saying that with an amendment addressing the language recommendation from **SEN. GROSFIELD**, **SB 455** would work and he urged passage. *{Tape 1; Side A; Approx. Time Counter: 0-12}*

HEARING ON SB 484

Sponsor: **SEN. TOM BECK (R), SD 28, Deer Lodge**

Proponents: **Jan Sensibaugh, Director, Montana Department of Environmental Quality**
 Don Allen, Western Environmental Trade Association
 Jim Jensen, Montana Environmental Information Center
 Curt Chisholm, Deputy Direction, Montana Department of Environmental Quality

Opponents: **None.**

Opening Statement by Sponsor:

SENATE PRESIDENT TOM BECK, SD 28, Deer Lodge, opened by saying that **SB 484** was a bill for an act creating a hard-rock mining reclamation debt service fund. It would authorize the Board of Examiners to issue and sell hard-rock mining reclamation general obligation bonds in an amount not exceeding \$8 million upon the request of the Department of Environmental Quality (DEQ). This would create the Hard-Rock Mining Reclamation Special Revenue Account. The RIT tax would be used to pay the bonds off after the RIT trust fund had reached its \$100 million cap. The RIT fund was approximately one year from reaching that cap. Several of the mines in Montana had bonds that did not cover the reclamation. The Beall Mountain Mine needed its water cleaned up for quality purposes and the cost of that would be approximately

\$4 million. This was a joint venture with the United States Forest Service and they would assume \$2 million of that cost. The U.S. Forest Service did not want to do anything until they had the assurance that the state was going to put up some money towards this reclamation. Another area that the bonds did not appear to be sufficient was in the Kendall Mine. Right now, the Kendall Mine was going through an assessment to find out just what the cost of that clean-up was going to be. The idea of **SB 484** was to not burden the general taxpayers with this problem. The RIT fund was paid by the Metalliferous Mine License Tax which was paid by the industry and would be used to pay off the bonds. The people in the industry that he had spoken to had no objections to his knowledge. When that tax reached \$190, he thought that there was some thought that this tax would probably be removed due to the fact that we had these clean-ups. We could take that money and we could use it to pay off the bonds and go ahead and get the clean-up done. **PRES. BECK** emphasized the importance of environmental clean-up to make these areas of our state environmentally sound. **SB 484** would amend sections 15-37-117 and 75-10-743 of the Montana codes and would provide a delayed effective date.

Proponents' Testimony:

Jan Sensibaugh, Director, Montana Department of Environmental Quality, supported **SB 484** and provided written testimony, **EXHIBIT (nas41a01)**.

Don Allen, Western Environmental Trade Association, stood in support of **SB 484**. He had some concerns about using RIT monies for other uses than reclamation, and for letting responsible parties "off the hook", but concluded by saying **SB 484** was the best approach.

Jim Jensen, Montana Environmental Information Center, rose in support of **SB 484** and offered **EXHIBIT (nas41a02)**, a letter to the committee from **Stephanie and Alan Shammel**, ranchers from Hilger, who were in favor of this bill. Their family ranched below the Kendall Mine and the ranch operation was affected by property contamination, water pollution and water loss and the costs involved in developing new water supplies. **Mr. Jensen** stated there had been an inaccurate use of wording here today and clarified that the Metalliferous Mines License Tax and the Resource Indemnity Tax had been used interchangeably. This bill applied to the Metalliferous Mines License Tax and on page three, section five, starting on line 23 of the bill, it referred to disposition of this tax. It was confusing to a degree because the 1993 legislature that changed the way the Resource Indemnity Tax was imposed on the hard-rock mining industry and ceased to

tax them in the name of the RIT and instead changed the Metalliferous Mines License Tax to derive the same amount of revenue that the RIT had previously raised. The MEIC was in favor of this legislation, not because it was an ideal situation, but because Montana had no choice now with no money in the budget available for the enormity of reclamation expenses and was forced by a failure to properly acquire reclamation bonds for the past ten or fifteen years. The RIT was created to deal with past practices; oil and gas, coal, and metal mine extraction industries. **Mr. Jensen** referred to the first summary report just for hard-rock mines that was published and said that every name listed was a mine representing the number in Montana. The reclamation expenses now facing us at the Zortman and Landusky Complex had been estimated as high as \$120 million and \$11 million or \$12 million at the Kendall mine for which the state had \$1.9 million in bonding and there were more to come. **Mr. Jensen** asked the committee to look at page three, new section four, lines 9 through 21, and specifically on section two, sub (a) where the purposes for these funds were limited; "state costs of implementing legally required reclamation, operation, and maintenance at hard-rock mines that would otherwise not occur because of mine operator insolvency or the insufficiency of the available surety bond". He believed that the language needed to be amended to require the state to have foreclosed whatever options it had on the operator prior to spending public money so that the state does not reclaim the Kendall Mine and then have Canyon Resources derive the benefit while they still owned the project. **Mr. Jensen** stated that **PRES. BECK**, a couple of sessions ago, wisely brought legislation forth that gave authority to the Abandoned Mine Reclamation Bureau to do just that, at these inactive abandoned mines, in conjunction with reclamation being conducted at those mines. In terms of the reclamation need and the sad nature of having to use revenue for mines that should not have been an obligation of the public, he urged the committee to look at the Western Governors' Association's Report Of Cleaning Up Abandoned Mines, A Western Partnership which identified the enormity of this problem. He offered to obtain copies for the committee members if desired. **Mr. Jensen** reminded the committee to always keep in mind where the funds came from, where they go, how they were obligated, and what would happen the next couple of years. He urged the committee to be careful and ask the fiscal analyst, probably Roger Lloyd, what the projected revenues were and what was a reasonable and likely amount of bond and debt the state could get with the mining that was coming in that was enumerated here with this eight and a half percent and was it likely to decline or increase over time. He sensed that, with the Stillwater project coming onboard, it needed to be brought into the analysis also so that one could know, in fact, what to expect in terms of money. **Mr. Jensen** thought \$8 million dollars

was a highly overstated amount that would be raised by bonds based upon the time amount. **{Tape 1; Side A; Approx. Time Counter: 12 - 32.7}**

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked how the DEQ prioritized their work with limited funds. **Jan Sensibaugh** said it was an internal departmental prioritization based on the crisis point of the situations at the mines. The first priority was the Beall Mountain Mine as money for water treatment was short and when the bond amount was gone, they would sell bonds to fund the continuing water treatment. At the Zortman and Landusky Complex, the DEQ had quite a bit of bond money so bundling reclamation could be done. The DEQ was looking at going to federal Congress for some additional funds. Until they exhausted all other sources of revenue, the DEQ would not sell the bonds. **SEN.**

MCCARTHY stated that the bill required a two-thirds vote of the legislature; she questioned if the DEQ's prioritization list also needed the vote of the legislature as there were no provisions in the bill asking for the list to come back to the legislature, as we had with most of the funding sources. **Ms. Sensibaugh** replied that would be up to the DEQ. **SEN. KEN MILLER** clarified that the bill would divert the eight and a half percent that was going to the Orphan Share Account and put it into this new bonding program. **Ms. Sensibaugh** responded that was correct. **Ms.**

Sensibaugh stated that the only correlation the DEQ had was that they wanted to make sure that there was going to be additional funds coming in to the Orphan Share Account so that when they took that off there would not be a huge drop in the account.

Ms. Sensibaugh agreed. **SEN. MILLER** wanted to know how much more money was going to flow into the Orphan Share Account when that happened. **Curt Chisholm, Deputy Director, Montana Department of Environmental Quality**, stated that the projected revenue to the Orphan Share Account, once the Resource Indemnity Trust Fund was capped as certified at \$1 million, was approximately \$1.2 million per year for both years of the biennium. Currently, the eight and a half percent of the Metalliferous Mine License Tax was projected to deposit into the Orphan Share Account, roughly \$689,000 in fiscal 2002 and \$667,000 in fiscal 2003. That was the revenue that the DEQ would like to dedicate to the debt service for the sale of the bonds. **SEN. LORENTS GROSFIELD** inquired whether that was enough money to bond for \$8 million.

Mr. Chisholm responded that their projections being used were very conservative. If they sold bonds of \$8 million that were 30 year bonds, conservatively, at about 5.5 percent interest on those bonds, the annual bond payment would be \$364,000 per year. So the DEQ's bond payment for \$8 million would be about half of the projected revenue that **Mr. Jensen** was questioning. The

projected revenue to the Orphan Share Account, the 8.5 percent, was in the \$600,000 range for about the next two or three years. Whether the revenue would continue at that rate indefinitely, no one had projected beyond that period of time. If the bond payments stayed around \$364,000 per year, there should be adequate resources in the Metalliferous Mine License Tax to retire that debt. **SEN. GROSFIELD** asked if \$8 million was enough. **Mr. Chisholm** stated that \$8 million was the ceiling the DEQ had established for the amount of authority the department would have. Whether or not they would actually sell \$8 million worth of bonds in the next biennium was doubtful probably at this point in time but, at least, the DEQ would have that flexibility to go that high. **SEN. GROSFIELD** said he thought **Mr. Jensen** raised a good point about making sure that the DEQ had exhausted the possibility of getting funds out of the mine operator before bonding started. He was not sure that the language was quite strong enough there and asked for comment. **Ms. Sensibaugh** said the DEQ had no intentions of using this fund to sell bonds until they had exhausted every other source of revenue. If the language did not do that, the DEQ probably should fix it. **SEN. MILLER** asked if the Orphan Share Account was a trust fund as it was designed to pay for water assessment. **Mr. Chisholm** stated that the Orphan Share Account was established in the 1997 session, he believed. The purpose of the account was to draw revenue from the Metalliferous Mine License Tax and from some RIT distribution in order to get cash in the account that could be used for control and application of liability when the state reclaimed a state superfund site. If there was a portion of the Orphan Share Account for the site to be reclaimed, the account would be used to fund that portion of the reclamation costs for the state superfund site for which there was no responsible party. So if the state's share of a particular site was thirty percent of the total reclamation costs, that thirty percent would be taken from the Orphan Share Account. There was no cap on it and it was not really a trust fund but an account that accumulated cash until someone applied under the act to get control and application of liability. **SEN. MILLER** asked if the hard-rock mine taxes that did not go into the RIT fund were the only thing left going into the Orphan Share Account. **Mr. Chisholm** stated that was correct. **SEN. MCCARTHY** asked if there were already some reclamation projects being taken care of through the Orphan Share Account. **Mr. Chisholm** stated that, as of a couple of months ago, no one had applied to the DEQ to use that money but he thought they had just recently received an application for two viable sites for the allocation of that so they had an appropriation request in to give the DEQ \$3.5 million of spending authority in the upcoming biennium in order to use the Orphan Share Account. **SEN. MCCARTHY** asked if the DEQ was using that fund for the clean-up at Pony. **Mr. Chisholm** responded

that the cost for the clean-up of the Pony site was not out of the Orphan Share Account. **CHAIRMAN CRISMORE** stated that we were leaving the whole burden on the taxpayers when we did not have enough bond. He realized that the orphan share money was not actually money taken from the general fund or the taxpayer but was money that had come out of the results of the mine or the mining applications, etc. **Mr. Chisholm** stated that the DEQ was proposing to retire the bond debt from the Metalliferous Mine License Tax from the very industry that created the mess and the DEQ was now asking for that tax to retire the debt. **Mr. Chisholm** offered a flow chart as **EXHIBIT(nas41a03)** and explained the flow of RIT proceeds and interest. **SEN. MILLER** asked if any hard-rock mining taxes had gone into the RIT, prior to setting up the Orphan Share Account, and **Mr. Chisholm** responded that he did not think so.

Closing by Sponsor:

PRES. BECK closed by saying he had gone over the RIT tax while involved with long-range building program. They had delayed the capping of that \$100 million by going in and taking some of the money for various projects before it went into the trust account. **PRES. BECK** agreed with **Mr. Jensen** in using all the resources the state possibly could for reclamation. **PRES. BECK** stated his purpose for bringing **SB 484** forth was that he believed it was the Kendall Mine that had a serious water problem affecting a lot of ground that had to be addressed. The sooner the state got in and addressed some of this reclamation, the better. If there were resources to go back and collect, the state could come back in and use those to offset the bonds or make the payments towards the bonds. Regarding the Beall Mountain Mine, in which Pegasus had declared bankruptcy, he thought the DEQ had gone through almost everything they possibly could, right now. The second point **PRES. BECK** made was that in the Finance Committee, during the last interim, the proper bonding on mines was discussed. He did not want this as a general obligation to the taxpayers of the state of Montana. **PRES. BECK** stated that **HOUSE REP. MATT MCCANN** had a bill in the House to re-address the bonding done on mines. There was some opposition to that bill, but **PRES. BECK** thought that, with good common sense, the bill would probably go through the system in order to address the proper amount of bonding that should be done to a mine. He said the state was not trying to put the mining industry out of business as a good, viable mining industry was needed but the state did not want to obligate the general taxpayers to cover the reclamation. In closing, **PRES. BECK** said that it was not just the mining industry that turned things upside down, our environmental laws and the people working with them had an awful lot to do with that and also the tremendous drop in the price of gold. **PRES. BECK** mentioned that

the reason this bill was so late coming in was that there were instances where they were working with the federal government, he believed either the BLM on the Zortman and Landusky Complex or the USFS on the Beall Mountain Mine. He said it was not strictly the responsibility of the state of Montana as the federal government had a certain interest also. Although if the state did not respond, he believed there would be litigation that would force the state to do the reclamation that would be covered by general funds. **PRES. BECK** asked for consideration of this **SB 484**. {Tape : 1; Side : B; Approx. Time Counter : 0 - 19.2}

EXECUTIVE ACTION ON SB 455

Motion/Vote: SEN. MCCARTHY moved that **AMENDMENTS TO SB 455 BE ADOPTED, EXHIBIT(nas41a04), (SB045501.amv)**. Mary Vandebosch explained the amendments that in the title, line five, "INTO" would be stricken and "IN" would be inserted. On page one, line 24, "transferred to" would be stricken and "in" would be inserted. On page two, line 19, "will be transferred to" would be stricken and "is in" would be inserted. **Motion carried unanimously. Vote was 7-0.**

Motion/Vote: SEN. MCCARTHY moved that **SB 455 DO PASS AS AMENDED. Motion carried unanimously. Vote was 7-0.**
{Tape : 1; Side : B; Approx. Time Counter : 17.5 - 21.4}

EXECUTIVE ACTION ON SB 484

Motion/Vote: SEN. GROSFIELD moved that **AMENDMENTS TO SB 484 BE ADOPTED, EXHIBIT(nas41a05), (SB048401.amv)**. Mary Vandebosch explained the amendments. **Motion carried unanimously. Vote was 7-0.**

Motion: SEN. COLE moved that **SB 484 DO PASS AS AMENDED.**

Discussion: SEN. LORENTS GROSFIELD asked Jan Sensibaugh whether the House bill sponsored by REP. MATT MCCANN was a DEQ department bill. Ms. Sensibaugh responded it was a Finance Committee bill. The DEQ had worked on it quite awhile but what happened was, subsequent to the Pegasus bankruptcy and the shortage of bonds, an audit was done of the DEQ's bonding program and the bill was an outgrowth of all the problems found with that program. SEN. GROSFIELD asked if the bill would adjust the bonds to the point where the state would not get into shortages. Ms. Sensibaugh responded that she believed it would and as the bond calculations were being re-done, the bond amount was increasing significantly for those companies. One of the things that the DEQ was looking at doing was having a contingency amount encapsulated in bonds

because it seemed like there was always something that came up. The mining industry was very resistant to that. She stated that the DEQ believed that with **REP. MCCANN'S** bill, the DEQ was doing annual reviews of the bond amount and that the shortages would go away. **SEN. GROSFIELD** questioned if there was a contingency in there. **Ms. Sensibaugh** stated that, currently, there was. **SEN. GROSFIELD** asked if there were similarities with this issue in Idaho or Wyoming. **Ms. Sensibaugh** responded there were and said this was something that, for the first time, not only the states but the forest service, BLM, and other people were facing cases of bankruptcies and were being forced to do the reclamation themselves and a bond was not adequate; based on the water treatment situations that would arise. **SEN. GROSFIELD** stated that he did not want **SB 484** to become an excuse that operators or the agency could under-bond projects and then rely on this mechanism. He thought there were other things that could be done with the money coming in to the RIT with an example such as **SEN. DEBBIE SHEA'S** bill. **Ms. Sensibaugh** stated that the DEQ did not want to have **SB 484** be a mechanism to do reclamation either, which was why the DEQ was supporting **REP. MCCANN'S** bill and doing everything they could to get adequate bond amounts to cover all the reclamation needed.

Vote: Motion that **SB 484 DO PASS AS AMENDED** carried unanimously.
Vote was 6-0.{Tape: 1; Side: B; Approx. Time Counter: 21.4-28.1}

HEARING ON SB 449

Sponsor: **SEN. JON TESTER (D), SD 45, Big Sandy**

Proponents: Jan Sensibaugh, Director, Montana Department of Environmental Quality

Opponents: None.

Opening Statement by Sponsor:

SEN. JON TESTER, SD 45, Big Sandy, opened by saying that **SB 449** was a bill for an act eliminating the Hard-Rock Mining and Reclamation Account and the Opencut Mining and Reclamation Account in the State Special Revenue Fund. It would establish an Environmental Rehabilitation and Response Account in the State Special Revenue Fund; dedicating certain fines and penalties and certain unclaimed or excess reclamation bond funds to the account. It would provide that funds in the account be appropriated to the Department of Environmental Quality (DEQ) for certain purposes, such as, responding to environmental emergencies. It would amend sections 75-10-1223, 82-4-241, 82-4-

311, 82-4-424, and 82-4-426 of the Montana codes and would be effective immediately. **SEN. TESTER** stated that **SB 449** would provide a source of funding for activities regarding reclamation funding short-falls and research opportunities. A number of contaminated small sites or un-reclaimed mine sites were identified in the biennium where clean-up funding was simply not available. This was because the site had not made the various criteria under the funding sources available through the DEQ for remediation or reclamation or because an innocent landlord, local government, or volunteer group did not have the available financial resources to perform a remediation or reclamation. The DEQ was concerned about those sites continuing to create environmental problems. **SB 449** consolidated two reclamation accounts the DEQ had, which were being de-earmarked in **HB 41** with the penalties assessed under the septic tank bumpers law going into a new account titled the Environmental Rehabilitation and Response Account (ERRA) which was for the purpose of funding remediation and reclamation. He urged passage of **SB 449**.

Proponents' Testimony:

Jan Sensibaugh, Director, Montana Department of Environmental Quality, supported **SB 449** and provided written testimony, **EXHIBIT(nas41a06)**.Tape 1; Side B; Approx. Time Counter: 28.1 - 33 {Tape 1; Side B, Approx. Time Counter: 28-1 - 33 AND Tape 2; Side A; Approx. Time Counter: 0 - 2.7}

Questions from Committee Members and Responses:

SEN. LORENTS GROSFIELD asked **Jan Sensibaugh** if **HB 41** came from the Senate Finance Committee and if that committee was de-earmarking the costs of **HB 41** and **SB 449** to the General Fund. **Ms. Sensibaugh** said that was right regarding both points. **SEN. GROSFIELD** stated that **HB 449** was fine with him except for the part of the de-earmarking to the General Fund. **Ms. Sensibaugh** responded that this account had been in place for years and it was part of the two mining acts to provide a source of money to do these small reclamation projects that arose because of a lack of an operator or something else. Over the years, the DEQ had identified some other types of remediation responsibilities, such as the Highwood Fire Department and the Butte spill-over, and it was not a whole lot of money but the entities did not have any funds for their clean-up. Those kinds of problems were unanticipated and so the DEQ could not ask for money from the General Fund because of the uncertainty.

Closing by Sponsor:

SEN. TESTER closed by saying that the state had problems if there were not funds available from the DEQ to take care of these smaller incidents to get reclaimed. He urged passage of **SB 449**.
{Tape: 2; Side: A; Approx. Time Counter: 2.7 - 6.3}

EXECUTIVE ACTION ON SB 449

Motion: **SEN. COLE** moved that **SB 449 DO PASS**.

Discussion: **SEN. GROSFIELD** stated that he believed we really did not want to start down this road as we had spent years trying to de-earmark a lot of things with one of the main categories being fines and penalties. He referenced that the issue with penalties could be explained by going back to the Game Wardens' Retirement Fund which was funded to some extent by fish and game fines. That was an incentive for getting fines from game infractions and he did not think that was the kind of incentive that the state wanted in our statutes. **SEN. GROSFIELD** asked if there was a simple way to do a coordinating instruction with **HB 41** that said that if that bill passed with the de-earmarking in it, then that bill would control with respect to that part of the money. **SEN. MACK COLE** stated he thought we needed to have this type of funding set into a specific area. **SEN. KEN MILLER** stated he was still trying to track the money relating to the fiscal note. He agreed with **SEN. GROSFIELD** regarding ear-marking or de-earmarking of funds. **Curt Chisholm, DEQ**, explained the fiscal note and stated that this would put the interest earned in to the account rather than into the General Fund. **SEN. GROSFIELD** stated the interest from many of these accounts going into the General Fund was another principle like dedicated revenue.

Vote: Motion that **SB 449 DO PASS** carried 7-3 with Grosfield, Miller, and Tash voting no. Other votes from Crismore, Mahlum, Cocciarella, Cole, McCarthy, Roush and Toole. Taylor not present. {Tape : 2; Side : A; Approx. Time Counter : 6.3 - 12.8}

EXECUTIVE ACTION ON SB 463

Motion: **SEN. GROSFIELD** moved that **AMENDMENTS TO SB 463 BE ADOPTED**, **EXHIBIT**(nas41a07), (SB046301.agp) .

Discussion: **SEN. LORENTS GROSFIELD** stated that this amendment was in response to some discussion that came up in the hearing regarding whether this language would apply to all of Article II or would only apply to Section III. The intention was to have it only apply to Section III and he thought it did but this amendment would make it absolutely clear so it would say that it

only applied those rights specifically enumerated in Subsection I, meaning lines 13 through 17 of the bill.

Vote: Motion that AMENDMENTS TO SB 463 BE ADOPTED carried unanimously. Vote was 10-0.

Motion: SEN. GROSFIELD moved that SB 463 DO PASS AS AMENDED.

Discussion: Greg Petesch, legislative staffer, offered to answer any questions the committee might have regarding this legislation. **CHAIRMAN BILL CRISMORE** stated that this legislation would need two-thirds vote to pass on the floors. **SEN. KEN TOOLE** stated there was a lot of discussion during testimony of balancing rights and asked if this language would set us up to rank the rights that were enumerated in this subsection of the constitution. **Mr. Petesch** stated that the legislature may balance those rights and that was permissible authority for the legislature to do so where they desired to do that. The effect of that would be that, in those instances where the legislature did choose to balance those rights, the challenge to those legislatively determined balances would then be decided on a rational basis test as opposed to a strict scrutiny test. It would be easier for the legislative determination to be upheld than was currently the case. **SEN. VICKI COCCHIARELLA** stated that with this kind of legislation, there would never be predictability in the balance of the right regarding "a clean and healthful environment" and she thought that the drafters of the constitution were very careful in making sure this language was there. We heard some great arguments about the courts' proof and what they had to do. By passing this legislation, she thought the intent of the original constitution was not being preserved and this kind of legislation did a disservice to politics, but mostly to the people. **SEN. COCCHIARELLA** thought this was a radical departure from what the citizens of Montana expected. They did not expect their environment to swing in the air of politics and she thought this was a very bad bill. **SEN. MACK COLE** stated that all he was seeing in this bill was asking the people to balance all rights and the balance to be determined by the legislature should be valid unless determined to be unreasonable. He did not think there was anything unreasonable in doing something like what **SB 463** would do. **SEN. GROSFIELD** stated that the emphasis on getting the economy going and the concept of recognizing that Montana was a natural resources state should make the state go after that strength in a responsible manner. Regarding **SB 463** and the amendment with Article II, Section III, should be thought about in terms of Article IX, Section I, as well, which was the article that further defined "clean and healthful" and how we should perceive that language and that the legislature shall provide adequate remedies. He stated that the legislature had

tried to pursue balance of all rights but from the perspective of separation of powers, the legislature should be given significant consideration for its power. **SEN. GROSFIELD** did not think that **SB 463** was a radical bill or that it would have a radical effect. He did think it would remind the court, the legislature, the people in the litigation arena, and people seeking permits, that there was a balance to be achieved. **SEN. BEA MCCARTHY** stated that this issue of the balancing of rights was continually brought to the attention of the MEPA study group. She thought that by **SEN. GROSFIELD** bringing this legislation forward, it created a great forum for the people of Montana to explore the issue. **SEN. TOOLE** said that taking the inalienable rights in the constitution and making the test a rational basis balancing was a very significant change considering the testimony at the hearing of **SB 463** where the importance was stressed that the constitutional rights must show a compelling state interest. He added that the issue of separation of powers and certain legislative powers should be decided by the Montana Supreme Court. **SEN. TOOLE** thought that **SB 463** did skew the checks and balances between the right to a clean and healthful environment and the right to pursue life's basic necessities. He wanted to see this on the ballot because he thought that the right to a clean environment was something that was broadly supported.

{Tape : 2; Side : A; Approx. Time Counter : 12.8 - 33} **SEN. BILL TASH** contended that the sense of balancing of rights did significantly contribute to our state of economy. There was opportunity for compatible uses of natural resources instead of creating a panacea-type solution to cancel one use in the promotion of something else and we should explore that underlying concept of compatibility of uses. **SEN. KEN MILLER** stated the legislature was the state as its representatives and wondered how the legislature could possibly make the courts responsible in determining the best interest of the state, for example, when the state planned to build a road and weighed any damages with compelling state interest. He did not think it was the court's place to make those decisions regarding balance. He would not support getting rid of the inalienable right of a clean and healthful environment and did not believe **SB 463** would do that and he strongly supported this legislation. **CHAIRMAN BILL CRISMORE** referred to **SEN. TOOLE'S** comments that logging and mining were a small percentage of the economy as he represented a district where there was 85% of it that was federally-owned, the large owner of Plum Creek, state-owned lands, the balance was nine percent of that entire district. For so many years, the federal government said they wanted to keep the land as national forests but they would let the use of the timber for sale to generate a tax base in Lincoln County for the people and that was done for many years. Lincoln County was a county with one of the highest individual per capita incomes of any of the counties in

the state at one time. Now, Lincoln County's individual per capita incomes were about as low as they got. The reason for that was, in one year, Lincoln County had 18,000 people in the county including men, women and children and at the end of that one year, the mill closed down, one of the mines closed down, his county lost 1,000 of the top-paying jobs. Their county had no other taxable base to go to besides this national forest land so to him it was a very significant part of the income for his district. Currently, the largest payroll in his county was the forest service taking care of many acres of land that the state was not taking care of any longer. They went from over 300 million feet per year to 40 million feet per year of timber harvest on the Kootenai Forest and those figures told us that over 300 million feet of timber were dying and going to waste every year. **CHAIRMAN CRISMORE** stated that he could not believe that this had not really changed our economy. **SEN. TOOLE** stated that **SB 463** nor the MEPA bills were going to change that situation and encouraged the committee members to obtain a list from **Anne Hedges** that gave 39 examples, since 1989, of environmental laws that were rolled back. **SEN. TOOLE** submitted that what the majority saw could be done to stimulate the economy was to make it easier to do business in Montana and the way to accomplish that was to roll back environmental protection and also the issue of tax revenues. As this had been done through time, the economy had continued to slide down with fewer jobs and lower-paying jobs. The reality was that there were only some things that we could do, as government, in Montana to affect the big economic trends. **SEN. TOOLE** stated that doing this was not going to open the mill back up in northwestern Montana but clearly undermined the individual freedoms and liberties and protections that were here in Montana. He believed **SB 463** would create more confusion and potentially create future environmental problems and this approach would not boost the economy. **SEN. GROSFIELD** stated that he believed that everyone on this committee supported the right to a clean and healthful environment and maybe there were different attitudes about that and how to approach getting back on the road with our economy. He stated that there has to be balance between the inalienable rights. If we left that to the courts to decide those issues that would be up to four people in the Montana Supreme Court and those four people were politically responsive in the sense that they were re-elected but the legislature could not really run on issues for the court. **SEN. GROSFIELD** thought it made more sense to have these decisions made by the representatives of the people that were elected for the purpose of taking care of their laws and budgets and so on, from biennium to biennium. In this manner, it would include the safety valve of the Governor and the Governor's staff if something needed to be vetoed. It was a much more careful process and a more careful balancing act. There were

certainly negatives to natural resource commercial developments as there were negatives to agricultural developments. **SEN.**

GROSFIELD appreciated **SEN. MCCARTHY'S** point that the people were discussing this whole area of how we should move forward and how we should provide an economy that would give us some hope and keep our kids employed in this state that we all loved and maybe it was time to go to the people with this issue because they were ready for the discussion. We were not talking about putting this into law but rather taking it to the people and letting them decide. He urged passage of **SB 463**.

Roll Call Vote: Motion that **SB 463 DO PASS AS AMENDED** failed 5-6 with **Crismore, Cole, Grosfield, Miller and Tash** voting aye.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 20.6}

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. WILLIAM CRISMORE, Chairman

NANCY BLECK, Secretary

WC/NB

EXHIBIT (nas41aad)